

Circuit Court.

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and fitness have, by the moral law and by the statute law, placed this service upon you.

You are, on the one hand, a safeguard of the Nation against anarchy, and on the other hand, of the individual against injustice and oppression. You are also the judges between all parties in all kinds of controversies for the establishment of right and justice.

Some days ago I read an interview in a Honolulu newspaper of the Priest Father T. Caraher, wherein he said: "I find very little that is objectionable morally, and have gathered the impression that this city is free from most of the vice-conditions which we have to contend with in Cities on the Mainland."

This he said regarding conditions in Honolulu. It will be conceded that conditions regarding vice in this Territory are, in general, better outside of Honolulu than in Honolulu. There is, in general, less vice in a farming country than in cities.

Indeed, we can say with confidence that there is no criminal class in the County of Maui; and, further, that the vice-conditions referred to by the Reverend Father do not exist in this jurisdiction.

Our conditions are peculiar, and are due to the heterogeneous conglomerate mass and mixture of in almost equal numbers the many different races of men selected from many lands as men who are quiet, industrious, obedient and honest laborers, to which mass has been added men of American, English and German birth who have come here to enter into business or to prolong their lives and extend their happiness in our equitable, beautiful and healthful climate. The bad white man is not here, and the other men here are for work and wages.

These different races have various different views as to what is right and proper regarding many social and civic relations. Our laws were, in the main, formed on views held in America and Europe by the most enlightened people. Hence, in many respects our laws do not set easily upon the men of other races who have different standards of right, so far as positive precepts are concerned.

Hence, we find that the commands of our statute law often violated by men who do not see their propriety, while laws based upon moral precepts are much less frequently violated. Making the distinction in legal terms, we would say that offenses *malum in se* are not common, while offenses *malum prohibitum* are more frequent. Or we might say that crimes are not so frequent as to indicate a criminal class, while offenses are more frequent because of different views as to what is right and wrong.

There are many among us who violate the law as to relations between the sexes, and as to family and marriage relations, and as to the observation of the Sabbath, and as to many statutory duties for decency, for health and safety, who do not feel that in these regards they are doing wrong; their ideas on these subjects being based upon a different civilization or perhaps upon a want of civilization.

I have found that a good many of certain of the races among us are married without ever having seen each other before and in many cases they seem to have no regard or affection for each other; and when want of affection is supplemented by national custom of selling, or trading, or renting of women, and by the power of divorce at will, it is not strange that among them offenses against our laws regarding the sex and the family relation are frequent.

Many other and different examples can be found among these and other races where offenses are many without vicious, subjective, criminal intent.

With some races, the idea of the sanctity of the judicial oath seems

wanting; the virtue of veracity is not recognized by them even when not on the witness stand. With them, it is largely a matter of honor to state what will best serve a friend or a person of their own race, regardless of the facts, whether upon the witness stand or not. Many instances occur as regards these and other races wherein men who are not real criminals at heart, yet, violate the *positive precepts* of the law because they do not appreciate or see the reason for the law.

What, then, are we to do in such cases? Shall we close our eyes to such offenses and allow the law to be openly violated with impunity? There are three classes of duties regarding this matter: One for the Jury, another for the Judges, and another for those who have the power to pardon.

The Jury must decide according to the facts; and if the accused is guilty under the law and the facts, they should so find.

It is not their place to sentence or to punish or to pardon. The judges must take these palliating circumstances into account when they give sentence of punishment; and the persons who have power to pardon can do the same when that mercy is applied for.

The Jury, to do their duty, must find according to the facts. Mercy is not for the unconvicted who denies his guilt. When he admits his guilt or has been convicted, then the judge can be merciful in the punishment; and when some punishment has been inflicted, then those who can pardon may do so if the case warrants.

When crime is committed, let conviction be certain, and let punishment be merciful. The certainty of conviction rather than the severity of punishment deters from crime. For juries not to indict and convict, when the testimony shows the law has been violated, is to bring the law into contempt and to encourage wrong-doing.

How can we create in the minds of these people a realization of the heinousness of perjury except by some punishment for the crime of perjury? The same question can be asked regarding what is best as to other offenses concerning which these people do not appreciate the moral reason for the law which they violate.

In all these cases there should be a certainty of conviction and merciful punishment.

Juries should not be weak and childish but should be good, strong men; loving justice and sternly masterful, proceeding under their oaths and the law to their governmental duty in seeing that the guilty are presented for punishment.

People have no respect for a government too weak to enforce its laws. To enforce our criminal laws, we depend upon our juries.

When Richard the Second came to the throne of England, he was a boy ten years old. No one seemed to have power to protect the country and enforce the law. Then Bishop Langland, quoting from Ecclesiastes, exclaimed: "Woe to the land when the King is a child," and woe to our land when our juries are childish.

Our juries are king as to matters put by the law into their hands and should act like men; not like children.

Not theirs is it to be moved by a sickly sentimentality which they call mercy but which is due to weakness or to not understanding what is their part in our scheme of government. Theirs is the manly, the strong, the judicial part of our imperial self-government. Self-government should be the strongest of all forms of rule.

It should inspire respect by its manifestations of power. It should inspire confidence and a willing obedience by its inflexible, impartial administration of our just laws. The most real, royal phase of our government is in the power and rule provided for in our jury system.

I have said some words to you concerning the nature, power, and duties of juries. I delight to talk of these things rather than of

rights. I delight to address men who have grave duties rather than men who have only rights.

We hear a great chorus of song about rights by men who never speak of their own duties.

Some men seem to have been born or imported stuffed full of rights. They are to be pitied. A clamor for rights is a confession of want and of weakness.

Duty goes with power. You now as jurymen enter upon the exercise of a kingly power taken from the ancient kings, and the possession of which was admitted by King John at Runemede six hundred and ninety-seven years ago the fifteenth day of this month. This power is absolute and supreme,—and it is yours.

In the service of your rule, you will have the advice and direction, as to matters of legal form and procedure and as to certain matters which will come before you, of our able County Attorney, who as such is Deputy Attorney General of the Territory and who has in charge as a special duty the conducting of criminal actions in this jurisdiction. He, no doubt, is well informed as to what is expedient for you to con-

sider. He will draw up your charges, called indictments, against accused persons, and will aid you in the examination of witnesses. He only can be in your juryroom when you are in session but will not be present when you vote on the question of whether to indict or not. You can have an interpreter when necessary to get the testimony of witnesses. The County Sheriff will furnish you with bailiffs to serve you and attend at your door. You will, when you retire to your juryroom, elect one of your number to be your Secretary whose duty it will be to keep a record of all your proceedings.

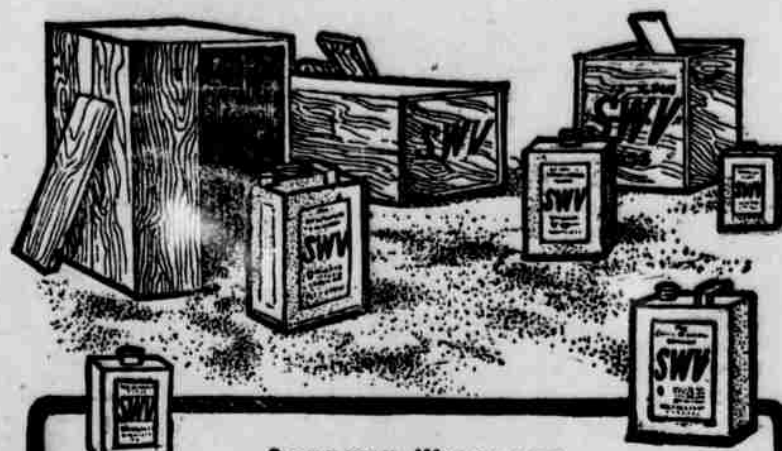
The Court appoints Mr. Harold W. Rice to be your Foreman, who will preside at your deliberations and perform such duties as are legal and usual for the Foreman of a Grand Jury.

You can report to the Court from time to time as you see fit, and at the close of your service present the Court with a full final report of all matters and things done by you. You may now retire to your Grand Jury-room.

S. B. KINGSBURY,
Judge.

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